

ORIGINAL

(26)

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SC

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TERRY BOYD WILKINSON, ET AL :
:
PLAINTIFFS : CIVIL ACTION NO.
VS. :
: 01-CV-1146
NORFOLK SOUTHERN CORP., ET AL. :
: HON. SYLVIA H. RAMBO
:
DEFENDANTS :
:

FILED
HARRISBURG, PA

AUG 14 2002

MARY E. D'ANDREA, CLERK
PER _____
DEPUTY CLERK

PLAINTIFF'S REPLY IN OPPOSITION TO
NORFOLK SOUTHERN CORPORATION'S
MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by their counsel, respectfully request that the NS Motion for Summary Judgment be denied and dismissed, as a genuine issue of fact does exist as to the legal issues raised therein. In opposition to said Motion, the following is set forth:

1. Admitted.
2. Denied. On the contrary, when viewing the evidence in the light most favorable to the plaintiffs, Mr. Wilkinson was a Norfolk Southern "employee" for purposes of the Federal Employers' Liability Act (FELA).

3. Denied. Under Pennsylvania common law Norfolk Southern did owe Mr. Wilkinson common law duties, that it breached, resulting in his accident and injuries.

4. Denied. Material facts exist that render summary judgment inappropriate.

WHEREFORE, Plaintiffs respectfully request that NS's Motion for Summary Judgment be denied.

Respectfully submitted,

Coffey & Kaye

BY:

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CERTIFICATION OF SERVICE

I, Lawrence A. Katz, Esquire do hereby certify that I am the attorney for Plaintiff and this day serving Plaintiff's Proposed Order, Plaintiff's Reply in Opposition to Norfolk Southern Corporation's Motion for Summary Judgment, Plaintiff's Reply in Opposition to Norfolk Southern Corporation's Local Rule 56.1 Statement of Undisputed Facts and Plaintiff's Memorandum of Law in Support of His Reply in Opposition to Norfolk Southern's Motion for Summary Judgment on the party listed below, and attached documents via U.S. Mail, which service satisfies the requirements of Pa. R.C.P.:

Craig J. Craig J. Staudenmaier, Esquire
Nauman, Smith, Shissler & Hall
200 North Third Street, 18th Floor
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COFFEY & KAYE

LAWRENCE A. KATZ
Counsel for Plaintiff

Date: August 13, 2002